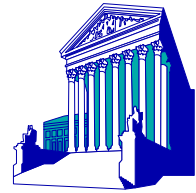




ARIZONA SUPREME COURT ORAL ARGUMENT CASE SUMMARY



**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
1501 West Washington - Phoenix Arizona 85007- 3231
Public Information Office: (602) 542-9310**

Antoin Jones Summary CV-99-0536-AP

Counsel

Antoin Jones is represented by appointed counsel Edward F. McGee and Stephen R. Collins. The State of Arizona is represented by Janet Napolitano, Kent E. Cattani, and Dawn M. Northup.

Facts

The key actors in this case are Antoin Jones (Defendant), Geraldine Gishie (the victim), Vanessa Odom (Defendant's girlfriend), Beatrice Almanza (Defendant's coworker), Danny Almanza (Defendant's friend and Beatrice Almanza's brother), and Terry Morris, Dennis Olson, and Brian McIndoo (detectives).

On April 16, 1996, not long after her twelfth birthday, Geraldine Gishie disappeared from Bonsall Park in Glendale, Arizona. Her body was found the next day in a dumpster, behind an abandoned bar, near the intersection of 43rd Avenue and Camelback. Her hands had been bound with one of her socks, and the other sock was tied around her throat. She was covered in blood and clothed only in a T-shirt and training bra, which had been pushed up over her breasts. In addition to massive head wounds, her body bore many lacerations and contusions, including what later turned out to be two stab wounds to her throat; she had also been sexually assaulted. Defendant was a suspect almost immediately, primarily because the dumpster had been emptied recently and several items belonging to Defendant were found underneath the victim's body, including his Taco Bell time slip and a receipt with his shift manager's (Beatrice Almanza) telephone number on it. Police interviewed Beatrice and her brother Danny, and on April 24, 1996, Detective Olsen paged Defendant and asked him to come down to the police station. Defendant arrived at about 10:00 p.m. with his girlfriend Vanessa and their infant child in tow. Detectives Olsen and Morris interviewed him and ultimately decided to hold him for further questioning. He was read the *Miranda* warnings, and he eventually requested counsel, at which point the questioning ceased.

Detectives informed Defendant that they were seeking a warrant to obtain a sample of his blood, and he was then allowed to use the telephone and visit with his girlfriend, Vanessa, from about 2:40 a.m. until shortly after 3:00 a.m., at which time Detective McIndoo took Defendant downstairs to await the phlebotomist. The room downstairs had no videotape equipment, so we are forced to rely on testimony to understand what transpired. McIndoo testified that Defendant made several attempts to discuss the case with him, all of which he rebuffed because Defendant had invoked the right to counsel. At some point, Defendant allegedly wore Detective McIndoo down to the point that he was willing to explain that Almanza was also subject to the order authorizing blood samples; the detective also explained that the potential sentence for murder ranged from a couple of years to capital punishment.

Shortly after 4:00 a.m., Detective McIndoo took Defendant back into the videotaped room and explained that Defendant had to initiate any discussion of the case. Defendant spoke with his mother and then made taped statements to Detective McIndoo, in which he admitted being at the scene and committing an act of necrophilia but implicated Almanza as the killer. Vanessa, however, eventually recanted her original statement that she knew nothing of the crime. She told Detectives that Defendant had confessed the killing to her, recounting it in vivid detail and even going so far as to take her to view the body and retrieve some evidence.

Procedural History

Antoin Jones was convicted of one count of first degree premeditated murder; one count of kidnaping with intent to inflict death, physical injury, or a sexual offense; one count of sexual assault by virtue of nonconsensual intercourse; and one count of sexual assault by anal penetration. With the exception of first degree premeditated murder, all counts were charged as class two felonies and first degree dangerous crimes against children. Defendant was also originally charged with one count of sexual assault by foreign object penetration, of which he was acquitted, and one alternative count of felony murder, which was subsequently dropped. The trial judge imposed a death sentence on the murder count, in addition to several noncapital sentences and a restitution award.

Issues Raised

- 1. Whether the trial court abused its discretion by admitting Jones' post-*Miranda* statements to Detective McIndoo**
- 2. Whether the trial judge committed clear and manifest error by denying Defendant's motion to suppress blood evidence obtained from him pursuant to a warrant**
- 3. Whether the trial judge abused his discretion by admitting certain autopsy photographs into evidence**
- 4. Whether the trial judge committed reversible error by "death-qualifying" the jurors on voir dire**
- 5. Whether the trial judge abused his discretion by declining to instruct the jury on second-degree murder**

6. Whether the trial judge committed reversible, structural error by denying Jones' request for a jury sentencing
7. Whether A.R.S. § 13-703 fails to sufficiently channel sentencing discretion
8. Whether the trial judge erred in finding the (F)(6) aggravating factor ("especially heinous, cruel or depraved")
9. Whether the trial judge erred in failing to find the (G)(1) mitigating factor (impaired ability to conform conduct to law)
10. Mental retardation and A.R.S. § 13-703.02
11. Issues Raised to Prevent Preclusion

This Summary was prepared by the Arizona Supreme Court Staff Attorney's Office and the Administrative Office of the Courts solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.

May 2, 2002



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**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
1501 West Washington - Phoenix Arizona 85007- 3231
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CASE SUMMARY

B.J. LOGAN and NANCY LOGAN v. FOREVER LIVING PRODUCTS INTERNATIONAL, INC., CV-01-0367-PR

Parties and Counsel:

Petitioners: B.J. Logan and Nancy Logan, represented by William R. Hobson, Law Office of William R. Hobson, and Lisa Counters and Kevin Koelbel, Counters & Koelbel, P.C.

Respondents: Forever Living Products International, Inc., a subsidiary Aloe Vera of America ("AVA"), and Rex and Ruth Maughan, by Robert E. Miles, Edwin B. Wainscott and Kevin D. Quigley, Quarles Brady Streich Lang LLP.

Facts:

The Logans worked as at-will employees of Aloe Vera of America, Inc. ("AVA"), doing business as Maughan Ranches, from October 1994 until November 1996. The Arizona Employment Protection Act ("EPA" or "AEPA") went into effect in July 1996. The Logans owned a parcel of property just off State Route 89 in Yavapai County. They obtained a special use permit from Yavapai County to develop part of that property as a mini-storage facility. The Logans allege their employer, Rex Maughan, demanded that they sell him their land. They were unable to come to terms, and Maughan's agent terminated their employment. The Logans claimed wrongful termination in violation of public policy. The employer successfully moved to dismiss that count under Rule 12(b)(6), Arizona Rules of Civil Procedure, for not stating a claim under the EPA.

Issues:

"A. Whether the Arizona Employment Protection Act, A.R.S. § §23-1501 *et seq.* (AEPA) 'overruled' *Wagenseller v. Scottsdale Memorial Hospital*, 147 Ariz. 370, 381, 710 P.2d 1025, 1036 (1985), and thereby eliminated common law wrongful termination claims in Arizona?

"B. Whether with the passage of the AEPA, the Legislature has limited wrongful termination claims to just two avenues: (1) suits for discharge in violation of a state statute that protects the employment relationship, or (2) in retaliation for an employee's assertion of certain rights under a limited set of circumstances, A.R.S. § 23-1501(3)(b),(c)?

"C. Whether a wrongful termination cause of action predicated on public policy prohibiting 'extortion' or illegal kick backs or demands for gratuities for continued employment is actionable under the AEPA or at common law?"

Definitions:

at-will employment relationship that may be terminated by either party, either for cause or for no cause, at any time.

common law law that evolves through court decisions made on individual cases, as contrasted with statutory law, created by legislatures enacting statutes.

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May 2, 2002



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
1501 West Washington - Phoenix Arizona 85007- 3231
Public Information Office: (602) 542-9310

**STATE v. ANTHONY CHARLES DAVIS
CR-01-0423-PR**

Parties and Counsel:

The petitioner is Anthony Charles Davis, represented by Anna M. Unterberger, Deputy Maricopa County Attorney. The respondent is the State of Arizona, represented by Katia Mehu, Assistant Attorney General.

Facts:

In 1999, 13-year-old Tanya, her stepsister Chantel, and their 14-year-old friend Pamela were "hanging out" at the Superstition Mall when they met 19-year-old Jason. Shortly thereafter, on January 18, Tanya and Chantel snuck out of their home at night and met Jason in a neighborhood park. Defendant, age 20, was in the car with Jason. That night, according to Tanya, she voluntarily engaged in sexual intercourse with defendant in his home.

Two days later, all three girls snuck out of their homes at night and met Jason and defendant. Pamela voluntarily engaged in sexual intercourse with defendant that night, and two or three times thereafter.

The sexual conduct came to the attention of the girls's parents when defendant, Jason, and another boy visited Pamela and Chantel while Pamela was babysitting, and the adults returned home earlier than expected. Pamela told her mother about the sex. After these revelations, Tanya and Chantel ran away from home on January 29, the Friday before Super Bowl Sunday. Pamela went with them, but returned home later that evening.

Jason picked up the girls from their junior high school and took them to defendant's home. Tanya and Chantel were at defendant's home from Friday after school until Monday morning. Tanya recalled that defendant "came and went" all weekend long, and testified

that she had intercourse with defendant two or three times, the last time occurring the night of Super Bowl Sunday.

On February 1, the Monday morning after the Super Bowl, police went to defendant's home in search of Tanya and Chantel. The girls were taken to a juvenile detention facility, and an officer was told about their sexual activity with defendant. On February 3, a doctor examined them and found a fresh tear on Tanya's hymen, which was consistent with her having had intercourse within a one-week period. Examination of Pamela did not reveal any genital injury.

Police had Pamela place a recorded confrontation call to defendant. She told him she thought she was pregnant, and he admitted having intercourse with her. She also asked defendant if he had had sex with Tanya. Defendant denied that he had, but said that Tanya "was before you."

Defendant was charged with four counts of sexual conduct with a minor under age 15. Count I alleged sexual conduct with Tanya on or about January 18, 1999, Counts II, III and IV alleged sexual conduct with Pamela, occurring on or about January 20, January 25, and January 29, respectively.

During his testimony, defendant denied having intercourse with Tanya, but admitted having intercourse with Pamela on three occasions. He testified that Pamela told him she was 18. In support of an alibi defense on Count IV, defendant testified that he worked the entire Super Bowl weekend painting a house, and that he slept in his truck away from home. His employer corroborated defendant's testimony that he worked that weekend, and that he finished painting the house about 4:00 a.m. Monday morning. Pamela testified that the last act of intercourse with defendant occurred approximately between January 27 and January 29.

Over objection, the jury was instructed that the state need only prove beyond a reasonable doubt that the crime was committed "on or about" the dates charged in the indictment, but need not prove that the crime was committed on the exact day charged. The jury also was given an alibi instruction that, if it had a reasonable doubt about whether defendant was present at the time and place of the alleged crimes, it must find him not guilty.

During closing argument, the prosecutor told the jury that, as to Tanya, only one act of intercourse was alleged in the indictment although she had testified about two sexual encounters with defendant, once on January 18, 1999, the first night they met, and again the weekend of the Super Bowl.

Without objection, the date was eliminated from the verdict form relating to Tanya. As to Pamela, the prosecutor told the jury that the dates were not elements of the offenses so "if you believe that [defendant] had sex with Pamela on all three occasions like he said, then you don't have to worry about was it this date or that date."

Defendant was convicted as charged, and the court imposed mitigated sentences of 13 years on each count, to run consecutively, as required by A.R.S. § 13-604.01(K). After the jury was excused, the foreperson and another juror wrote to the judge that they considered the required sentences to be excessive; they requested executive clemency for defendant. The trial court entered a supplemental order stating the court's opinion that the sentences were excessive, and noting that the jurors unanimously agreed that the sentences were excessive. The court ordered that defendant could petition the Board of Executive Clemency for commutation of his sentence within 90 days of his commitment to ADOC. The mothers of the girls and the presentence writer all thought that defendant should receive five years imprisonment.

On appeal, defendant contended that the court effectively amended the indictment as to Counts I and IV by instructing the jury that the state was not required to prove the exact dates that the sexual conduct occurred, thereby rendering Count I duplicitous and gutting his alibi defense. He also contended that the sentence imposed violated the Eighth Amendment because it was cruel and unusual punishment.

The appeals court, in a split decision, affirmed. Judge Noyes would have reversed and remanded for a new trial on Counts I and IV.

Issues Presented:

(1) Should defendant receive a new trial on Counts 1 and 4 because the trial court's instructions: improperly amended Count 1, which resulted in a duplicative charge and the possibility that the verdict for that count was not unanimous; and/or improperly amended Count 4, as well as gutting defendant's alibi defense?

(2) Should this case be remanded for resentencing without application of A.R.S. § 13-604.01 because defendant's sentences are cruel and unusual under the federal and Arizona Constitutions?

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May 2, 2002